

complaint

This complaint is about a mortgage Miss H holds with Paratus AMC Limited ("Paratus"). Miss H complains that:

- the mortgage, and a linked payment protection insurance (PPI) policy were mis-sold;
- fees and charges have been applied to the mortgage unfairly; and
- Paratus has gone back on an agreement to switch the mortgage from capital repayment to interest-only.

background

Our adjudicator explained that the mortgage and PPI had been sold by a third party intermediary (a mortgage broker) not by Paratus itself. That meant we couldn't look at the alleged mis-sales as part of the complaint against Paratus.

The adjudicator also concluded that we wouldn't be able to look at much of the other aspects of the complaint, because Miss H had waited too long to bring them to us. All we could look at was whether fees and charges applied after October 2008 had been applied fairly.

When he reviewed the charges applied after that date, he reached the same conclusion that Paratus had reached when it looked into Miss H's complaint. This was that two charges, those applied in November 2011 and January 2012 had been applied in circumstances that we would generally regard as unfair. Paratus had offered to refund these charges. The adjudicator regarded this as a fair settlement, and recommended Miss H accept it.

Miss H doesn't agree that she's waited too long, and wishes to continue with her complaint.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done that, I agree with the adjudicator and for much the same reasons.

If Miss H wants to complain that the mortgage and PPI were mis-sold, she can do that, but not against Paratus, because Paratus (or GMAC - RFC as it was then called) didn't sell either product to Miss H. They were sold by the mortgage broker she used at the time, so a complaint that they were mis-sold would have to be made against the broker. If Miss H did complain, and wasn't happy with the broker's response, she could then ask us to look into it for her.

Here, I can only concern myself with the parts of the complaint that relate to acts or omissions on Paratus' part. Even there, as the adjudicator explained, our capacity to consider the complaint is very restricted.

We're not free to consider every complaint we receive. The types of complaint we can look into are set down in the rules under which we operate. Included amongst these rules are time limits on how long after a person has received a final response from the business they are complaining about, they can wait before referring their complaint here. Specifically, under the rules, a complainant must refer a complaint to us within six months of the date of the final response from the business.

This limit applies to the complaint that Paratus wouldn't change the mortgage to interest-only. It is apparent from the available correspondence that this complaint has been referred to us more than six months after Paratus issued its final response. The final response was issued on 12 December 2011, so Miss H needed to contact us no later than 12 June 2012. The complaint was passed to us in 2014, hence out of our time limits by some two years. I don't find there to be exceptional circumstances that would allow me to disregard the time limits in this case.

That leaves the part of the complaint relating to the application of fees and charges to the mortgage account. Here again, a time limit applies, but a different one. Also included in our rules are time limits on how long after a person becomes aware of a problem they can wait before complaining about it. Specifically, under the rules, a complainant must make a complaint within six years of the event about which they are complaining or, if later, within three years of becoming aware that they had cause to complain.

I'm satisfied Miss H would have known charges were being added to her mortgage account at least as early as the receipt of her 2009 annual statement. So the time limit under the three-year rule would have run out in 2012. Miss H raised her complaint about the fees and charges in November 2014. Applying the six-year rule means we can only look at fees and charges that have been applied since November 2008. I do that next, but as Paratus has raised an objection to us dealing with all other aspects of the complaint (which it is fully entitled to do) this means we will not be able to.

Lenders are entitled to levy charges on mortgage accounts in arrears. In our view, however, overall fairness dictates that only one charge should be levied in any month, and no charge should be applied in, or in relation to, a month in which a payment equal to the contractual amount due (or a lesser amount as agreed) has been received.

As part of his consideration of the complaint, the adjudicator identified two occasions where charges had not been applied fairly, specifically November 2011 and January 2012. Those charges totalled £100. I've reached the same conclusion about these two charges, and in fairness, Paratus has agreed that they should be refunded, back-dated to when they were levied. But I don't find that any other charges have been applied unfairly during the six-year period under scrutiny.

my final decision

Within my very limited remit to consider this complaint, my final decision is that I uphold this complaint in part only. In full and final settlement, I direct Paratus AMC Limited to refund to Miss H's mortgage account £100 worth of charges, back-dated for interest purposes to November 2011 and January 2012 respectively. I make no other order or award.

Under the rules of the Financial Ombudsman Service, I am required to ask Miss H to accept or reject my decision before 10 July 2015.

Jeff Parrington
ombudsman